COURT NO. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

SPECIAL APPEAL NO. 09 OF 2006

1. State of Uttaranchal through Secretary, Medical
   Health and Family Welfare Department, Dehradun
2. Director General, Medical Health & Family Welfare, Dehradun
3. Addl. Director, Medical Health & Family Welfare, Kumaon Mandal, Nainital.

....Appellants/Respondents

.....
Appellants

Versus

Chaturth Sherni Rajya Karamchari Sangh,
Medical Health Services, Uttaranchal,
Distt. Nainital through its Secretary

.... Respondents

Shri K.P. Upadhyaya, learned standing counsel for the appellants.

Dated: March 04, 2006

Coram:Hon. P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

This Special Appeal has been preferred against the judgment and order dated 21.10.2005 passed by learned Single Judge in Writ Petition No. 78 of 2005 (S/S), Chaturth Shreni Rajya Karmchari Sangh, Medical Health Services, Uttaranchal Vs. State of Uttaranchal and others.

2. Brief facts of the case giving rise to the present appeal is that petitioner/respondent's

association being aggrieved by t he procedure adopted by the respondents fro making promotions on the post of Class III from amongst IV employees by conducting examination in the Department of Medical health & Family Welfare, Dehradun preferred a writ petition before this Court. The learned Single Judge vide impugned judgment and order dated 21.10.2005 allowed the writ petition of the petitioner/respondent with t he direction to the respondents/appellants to make the promotions on the posts of Class III from amongst Class IV employees strictly in accordance with the Rules known as "*The Uttaranchal Govt. Servants (Criterion for recruitment by promotion) Rules, 2004'* ***(hereinafter will be referred to as the Rules).*** *Feeling aggrieved, the State has come up in the appeal.*

3. We have heard leaned counsel for the parties and perused the entire evidence on record.

4. The learned Single Judge in his judgment has rightly recorded a finding that the provision for promotion to the posts of Class III employees has been provided under Rule 4 of the Rules of 2004 and the respondents could only proceed for promotion in accordance with the Rules, which were in existence and not in accordance with the Rules which were not in existence. Rule-2 of the Rules, 2004 provides the these Rules **shall have effect notwithstanding anything to the contrary contained in any other service rules made by the Governor under the proviso to Article 309 of the Constitution, or**

orders, for the time being in force. Rule-4 of the Rules of 2004 is quoted as under:-

> *4. Recruitment by promotion to the post of Head of Department, to a post just one rank below the Head Of Department and to a post in any service carrying the pay scale the maximum of which is Rs. 18,300/- or above shall be made on the basis of merit, and to the rest of the posts in all services to be filled by promotion, including a post where promotion is made from a non-gazetted post to a Gazetted post or from one service to another service, shall be made on the basis of seniority to the rejection of the unfit."*

5. Accordingly, the learned Single Judge rightly quashed the order dated 08.11.2004 by which the Additional Director, Medical Health & Family Welafre, Dehradun directed the Chief Medical Officers of the various districts to provide one more opportunity for typing test to those candidates who had appeared in the examination.

6. In view of the above, we do not find any infirmity or perversity in the impugned judgment. Therefore, the conclusion drawn by the learned Single Judge appears to be perfectly justified. We do not find any good ground for interference in the impugned judgment.

7. Therefore the Special Appeal is dismissed accordingly. The judgment and order passed by learned Single Judge is upheld. No order as to costs.

(B.C. Verma, J.) **(P.C. Verma, J.)**

Rajeev Dang